

# Indian Residential Schools Adjudication Secretariat 2014

Annual report of the Chief Adjudicator to the Independent  
Assessment Process Oversight Committee

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## **About the Indian Residential Schools Adjudication Secretariat**

The Indian Residential Schools Adjudication Secretariat (the Secretariat) is an independent, quasi-judicial tribunal providing impartial application processing and decision-making for claims of abuse at federally-administered Indian Residential Schools.

The Secretariat manages the Independent Assessment Process (IAP), a non-adversarial, out of court process for claims of sexual abuse, serious physical abuse, and other wrongful acts causing serious psychological injury to the claimant. As one of the compensation programs established under the Indian Residential Schools Settlement Agreement (IRSSA), the IAP is the only option for former residential school students to resolve these claims,<sup>1</sup> unless they opted out of the Settlement Agreement. The deadline to submit an application under the IAP was September 19, 2012. The IAP aims to bring a fair and lasting resolution to harms caused by residential schools through a claimant-centred and neutral process.

The Secretariat has become one of Canada's largest quasi-judicial tribunals, holding over 4,000 face-to-face hearings each year with support of over 90 adjudicators and over 250 staff. It reports to Daniel Shapiro, Q.C., Chief Adjudicator, who was appointed by the IAP Oversight Committee and confirmed by the Courts.

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<sup>1</sup> Apart from the ability to seek leave of the Chief Adjudicator to access the courts, in specified circumstances defined by the IAP, which has occurred only twice since implementation of the IAP.

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## **Message from the Chief Adjudicator**

I am pleased to present my second Annual Report to the IAP Oversight Committee as Chief Adjudicator and seventh Annual Report since Implementation. As we begin 2015, the Secretariat and I continue to focus on bringing the IAP to a timely resolution, while maintaining a high quality of claimant hearings and a commitment to a claimant-centred approach. In January 2014, I submitted to the Supervising Courts my strategy titled "Bringing closure, enabling reconciliation: A plan for resolving the remaining IAP caseload" to: (a) outline production goals and completion times with more specificity; and (b) seek authority to implement an Incomplete File Resolution (IFR) Procedure and "Lost Claimants" Protocol. Parts of the latter two documents required court approval. Upon the unanimous consent of the Oversight Committee and the National Administration Committee, Orders approving the above documents, which are integral to the completion of the IAP, were issued by Justice Perell on June 19, 2014. Companion Orders have now been issued by each of the 9 supervising courts.

### **Completion of the IAP**

By the end of 2014, in excess of 30,370 claims had been resolved, approximately 80% of all applications received. In my 2013 report, I indicated the steps taken to accomplish the goal of holding up to 4,500 hearings in 2014. The number of hearings held was in fact 4,074 - short of the goal, but still the second highest year on record - with an additional 513 claims processed by way of the Negotiated Settlement Process (NSP). The reasons for falling short of our hearing goal include the shortage of hearing ready files, and significant, though improving, issues regarding lack of claimant counsel capacity. Canada also lagged behind in its commitment to achieving 708 settlements under the NSP during this year.

It should be mentioned, however, that, despite lower than expected numbers of hearings, 2014 was nonetheless a successful year with respect to the resolution of claims, with a total of 4,852 claims resolved. Though most admitted claims do proceed through an adjudicated hearing to a decision, or through a negotiated settlement, claims may also be resolved when a claimant withdraws from the process, a jurisdictional review decision is made, a claim is determined to be ineligible for admission, or via other avenues.

To counter the shortage of hearing-ready files, the Secretariat fully implemented the use of the Accelerated Hearing Process (AHP), which entails pre-hearing file management by adjudicators, who seek to ready the case for hearing, but allows cases to go to hearing even if all the claimant mandatory document production is not complete. Furthermore,

mid-way through 2014, I asked senior staff from the Secretariat to meet with law firms whose data indicated issues with potential lack of capacity to conclude their hearings by the spring of 2016. These discussions have centred on ensuring that counsel have a plan in place to allow them to complete their IAP cases within the appropriate time-frames, and to remind counsel of the benefits of the Accelerated Hearing Process and other initiatives designed to facilitate the completion of the IAP. In some cases, this has resulted in firms increasing their capacity or increasing the number of hearings they conduct per month. In other cases, legal counsel are working with Secretariat staff to schedule all of their remaining files for hearing, which allows counsel and staff alike to undertake the necessary planning and preparation.

Given the unique challenges associated with the current inventory of remaining claims, past methods for processing claims are clearly no longer a predictor of how claims will be resolved going forward. A variety of creative tools has been developed to address these challenges. The IFR procedure and Lost Claimant Protocol, approved by the Supervising Courts, are unique among tribunals. Many other projects and initiatives, including Intensive Case Management, the Student on Student Admissions Project, Claimants Who Struggle to Self-Represent and others, are underway. Despite the nature and scope of these challenges, we are presented with an opportunity to continue to ensure that the process remains fair, safe and respectful for all participants.

Work is well underway on Step One of the IFR Process, which entails administrative efforts to drill down into the reasons why the claim is “stuck”, as well as, in some cases, referral to an adjudicator for file management. The Oversight Committee unanimously approved Step Two of the IFR in December 2014. This step allows adjudicators to set conditions on the hearing of a claim, allows claims to be decided at the levels of harms and opportunity loss supported by the mandatory documents provided and, in some cases, allows claims to be dismissed without a hearing.

### **The fate of the IAP records at the end of the IAP**

As outlined in my previous report, an important outstanding issue involves the determination of the fate of the IAP records once the IAP is complete and the Secretariat no longer exists. An additional factor is that the Truth and Reconciliation Commission is very interested in obtaining many of the IAP records. Also, Canada, the Churches and other stakeholders have a significant interest in this important issue.

The issue is of vital importance to the IAP from its outset. Building on a practice developed between 2003 and 2007 in the Dispute Resolution process, and the privacy provisions set out in the Settlement Agreement, assurances were given to claimants and

other witnesses of the confidentiality of our hearing process. The National Research Centre in Winnipeg, which will contain the archive being developed by the TRC, was granted leave to participate as a full party in the Requests for Directions (“RFDs”) brought by the Truth and Reconciliation Commission and Chief Adjudicator. One of the Catholic Religious Entities challenged the jurisdiction of both the Chief Adjudicator and Truth and Reconciliation Commission to bring these Requests for Directions. Cross-examinations on affidavits were conducted in May and June 2014, and both RFDs matters were heard in Toronto on July 14-16, 2014 before Justice Perell of the Ontario Superior Court.

After carefully considering the expert and other evidence, I adopted the position that the confidentiality promised to claimants and others in the Settlement Agreement can only be upheld through the destruction of IAP Records, except where the claimant has explicitly consented to have their records archived.

On August 6<sup>th</sup>, 2014 Justice Perell released his Direction ordering most IAP documents to be destroyed following the final conclusion of the IAP claim, except for 4 categories of records (application forms, audio recordings of hearings, hearing transcripts and adjudicator decisions) to be kept for a 15 year retention period to enable former students to request such records be placed into an archive at the National Research Centre. Justice Perell further directed that a new Request for Directions be submitted to establish the terms of a program to notify claimants of such rights.

There have been a total of seven Notices of Appeal/Cross-Appeal/Intention to appeal filed in respect to Justice Perell’s August Direction. The only participants that did not appeal were the Assembly of First Nations and the Chief Adjudicator. As it became clear that no agreement was possible between the participants as to the form of the Order, the Court will be called upon to settle the terms of the Order, which is anticipated to occur early in 2015. The appeals to the Ontario Court of Appeal are not expected to be heard until late 2015. With the potential for further appeals it may be two years or more before the fate of these records is confirmed.

On December 23, 2014, the Truth and Reconciliation Commission (TRC) submitted to the Court their RFD on the Notice Plan. The TRC is requesting that the Notice Plan run the full fifteen years and involve community events.

### **Integrity of the IAP**

In past years, a number of difficult issues have arisen with respect to resolving matters impacting the integrity of the IAP, especially in terms of addressing complaints. As

discussed in my 2013 report, building on work begun by my predecessor, former Chief Adjudicator Daniel Ish, and following extensive consultation with the parties and stakeholders, I presented an Integrity Protocol to the Oversight Committee. The protocol was later presented to the National Administration Committee for discussion and later submitted to the Courts. The goal of the Integrity Protocol was to establish a fair and impartial procedure through which complaints to the IAP can be addressed.

On June 30, 2014, Justice Brown granted an Order approving the Integrity Protocol and the appointment of retired Justice Ian Pitfield as the Independent Special Advisor to the Court Monitor. On November 25, 2014, the two Administrative Judges issued a Joint Direction providing a clear delineation of responsibilities between the role of the Chief Adjudicator, the role of the Independent Special Advisor, and that of the Court Monitor with respect to integrity issues. The Joint Direction includes a new Administrative Protocol for addressing and managing complaints. This protocol defines how and what information is to be shared upon the receipt of a complaint. The Secretariat and I have and continue to work with Independent Special Advisor Pitfield's office in implementing the IAP Integrity Protocol.

### **Deputy Chief Adjudicators (DCAs) and National Meeting of Adjudicators**

On September 9, 2014, following a Request for Proposals seeking up to two Aboriginal DCAs, Oversight Committee approved the appointment of two new DCAs, Wes Marsden and Lisa Weber. Wes Marsden has been an IAP Adjudicator since 2010 and has extensive experience in Aboriginal legal and community work since being called to the bar in 1995, including serving four years as Chief of the Alderville First Nation (1997-2001). Lisa Weber has been an IAP Adjudicator since 2011 and also has a wide range of experience working with individuals, corporations, non-profit organizations, governments and members of the judiciary on Aboriginal legal issues. She earned a Masters Degree at the University of Manitoba (2005) where her final thesis involved review and analysis of Aboriginal constitutional issues and negotiated settlement of legal claims. I congratulate Lisa and Wes on their appointments and very much enjoy working with them. There are now eight DCAs, although one is working as a part-time, "DCA Emeritus" status.

In the past, adjudicators have met regionally once a year for the purposes of continuing education and assisting adjudicators recognize and address issues of secondary or vicarious trauma. For the first and perhaps last time, adjudicators will meet nationally on June 9 and 10, 2015 in Winnipeg. Additional meetings for Aboriginal and Francophone adjudicators will take place on June 8<sup>th</sup>. Guest speakers will include former National Chief Phil Fontaine, former Chief Adjudicator Ted Hughes and decision-writing specialist Archie Zareski.



## **In conclusion**

The IAP has now been in effect for a little over seven years, and every year thousands of former students of Indian Residential Schools have been heard, and received a decision or other resolution of their claims. All of the initiatives introduced this past year, and those to come, are bringing the Secretariat closer to fulfilling its mandate and the completion of the IAP. We work every day toward this end, but remain focused on ensuring our service is responsive to claimants needs, and is efficient while being flexible. We must continue to encourage claimants and legal counsel to work to have their claims "hearing-ready" and address their capacity issues, as this is the most effective way to conclude hearings by spring 2016.

I have the incredible pleasure of working alongside of a diverse group of Adjudicators and public servants. I would like to express my deepest thanks and appreciation to the members of the Oversight Committee and DCAs who help guide the IAP, to the Secretariat's Executive Director, Shelley Trevethan, and to all management and staff who are all committed to the IAP and to what it represents. It is an honour to be Chief Adjudicator of this important process and I remain optimistic about the course we've mapped towards the completion of the IAP.

This report highlights many of the Secretariat's achievements and challenges, and activities undertaken this year while upholding our continuing commitment to delivering a claimant-centred process.

# Key Performance Numbers

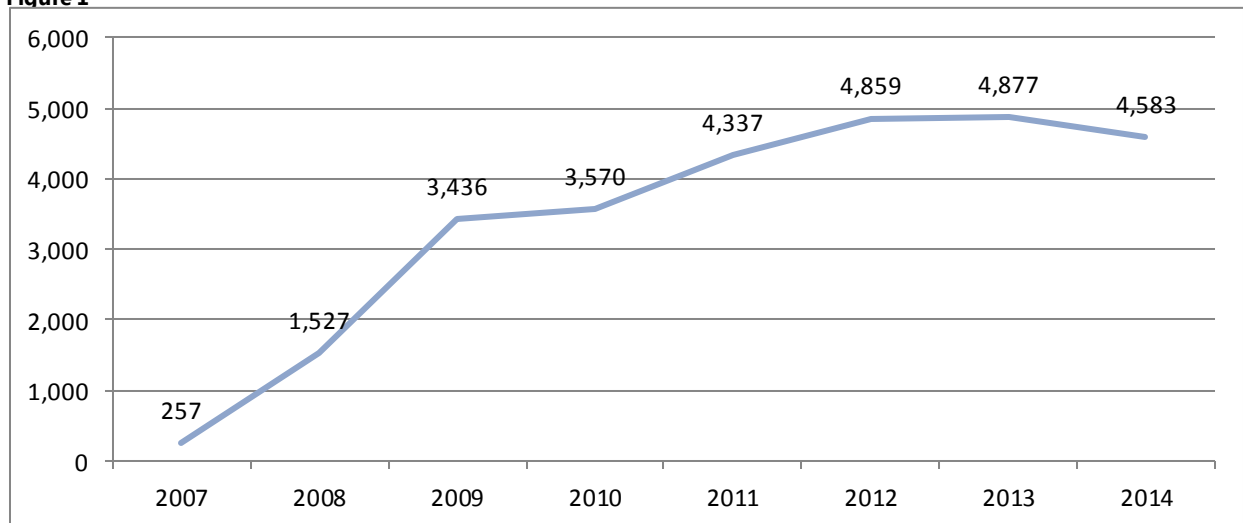
## Performance

With almost 38,000 individual applications received, the Secretariat forecasts no more than 33,800 will finally be admitted.<sup>2</sup> At the close of 2014, 33,556 claims had been admitted. There remain approximately 500 claims awaiting a decision regarding admission; of these, 40% are considered 'active' (awaiting the result of appeals, issues of legal representation, requests for more information, and similar issues), and the remainder are considered 'inactive', for example, claims for deceased claimants whose estates have not pursued the claim, and applications for lost claimants whom the Secretariat has not been able to contact. There is also the possibility that a small number of applications from former Blott and Co. claimants may yet be received (see page 25).

A total of 4,583 IAP claims were processed<sup>3</sup> in 2014, for a total of 27,446 since the beginning of the process. Though not quite matching the record of the previous year, this is still a significant achievement, particularly in light of the rapidly declining rate at which claims have reached hearing-readiness over the course of the year. The number of decisions rendered decreased slightly at 3,760, compared to 3,947 in the previous year.

## Files processed

Figure 1



<sup>2</sup> Future additions to the schools list under Article 12 of the Settlement Agreement would require application deadline extensions and would increase the number of IAP claims admitted, leading to additional hearings held and decisions issued. The Secretariat will continue to monitor Article 12 cases and report to the Supervising Courts on the operational impact, if any, on the IAP.

<sup>3</sup> A claim is considered processed if any of the following occurs: a hearing has been held, a paper review has been conducted, or the parties have entered into a Negotiated Settlement.

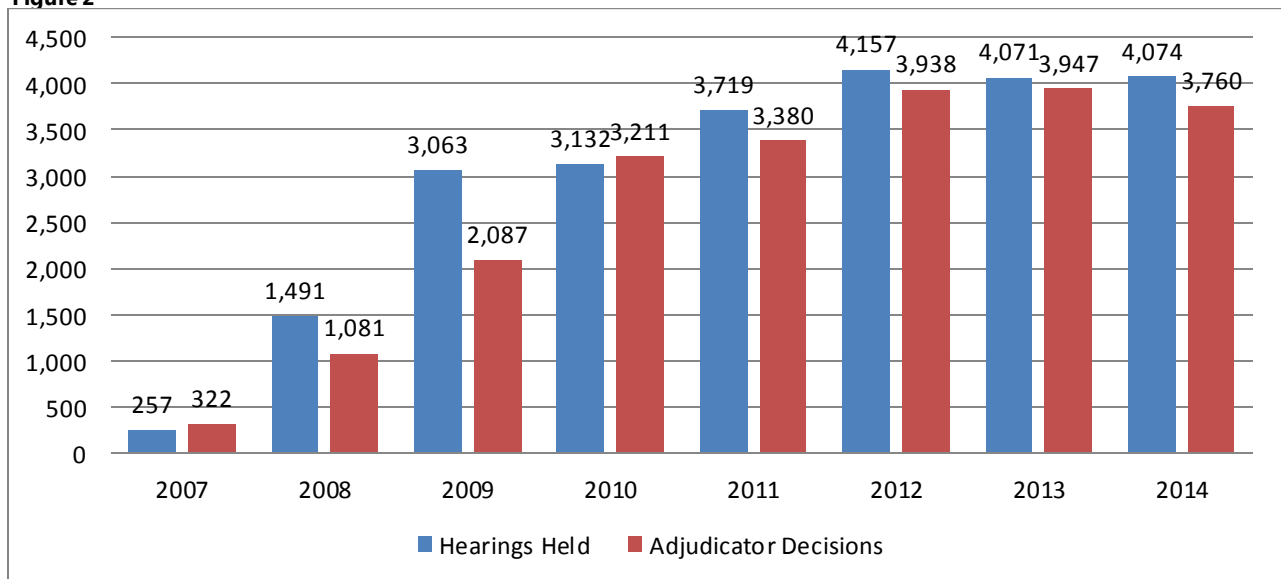
In 2014, 4,852 applications were resolved. This is a significant decrease from the record 6,519 set in 2013, but still higher than any year prior to 2012. As shown in Table 1 below, a significant contributor to the 2013 spike was the number of ineligible and withdrawn claims, which proceeded from the review and resolution of the astonishing numbers of applications received for the September 2012 deadline. By the end of 2014, 30,373 claims were resolved, representing approximately 80% of all applications received. Approximately 72% of these resolutions were in the form of an adjudicated decision.

**Table 1**

<b>Calendar Year:</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Since Implementation</b>
<b>Applications received</b>	3,849	5,418	4,750	5,148	5,494	12,786	372	132	37,949
<b>Applications resolved</b>	404	1,519	3,079	4,123	4,419	5,458	6,519	4,852	30,373
Adjudicator decisions	322	1,081	2,087	3,211	3,380	3,938	3,947	3,760	21,726
Adjudicator Jurisdictional decisions	0	0	0	1	11	21	53	76	162
Negotiated settlements	0	55	444	481	626	720	814	513	3,653
Ineligible/withdrawn	82	383	548	430	402	779	1,705	503	4,832

### First-Hearings Held and Decisions Issued

**Figure 2**



## Negotiated Settlement Process (NSP)

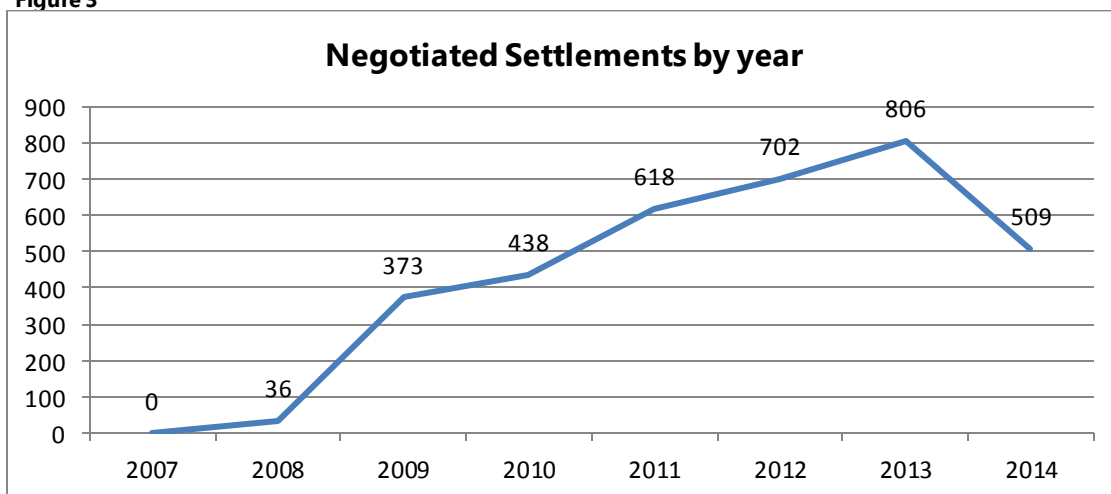
In the IAP, the parties have the option to negotiate a settlement to a claim, provided agreement can be reached by both parties. In the majority of cases accepted for negotiation, this process avoids the need for an adjudicated hearing and decision.

The NSP is handled primarily by Canada,<sup>4</sup> rather than the Secretariat, but it is worthy to note its contribution to claim resolution. As seen above in Table 1, since the beginning of the process, NSPs have composed approximately 12% of all claims resolved.

The number of claims resolving in the NSP has declined significantly in 2014, and is not expected to climb again. Where previously, Canada had committed to conduct 708 NSPs in each of the 2014-15 and 2015-16 fiscal years, representatives notified the Secretariat in early January 2015 that the target would be lowered to 500 per fiscal year.

It is important to acknowledge that not all claims are suitable for negotiation, and as the majority of negotiable claims are processed, fewer suitable claims will remain unheard. However, the net result of this reduction could be as many as 363 additional hearings, many of which may reasonably be anticipated to be particularly challenging, to be held by March of 2016. This presents additional challenges for the Secretariat, both in terms of time required for hearings and decision-making, and in terms of resources required, including financial and human resources, and adjudicator assignments.

Figure 3



<sup>4</sup> Adjudicators are required to approve legal fees in all negotiated settlements. Claims may proceed to NSP after an adjudicated hearing, but this is comparatively rare. Figure 3 reflects NSPs without hearing.

## Production

The Settlement Agreement established a target of 2,500 first-hearings per year, based on predictions made at the time that approximately 12,500 continuing claims would be submitted. However, due to the large number of applications received, in 2011 it was agreed that the Secretariat would strive to achieve 4,500 first-hearings per year. As can be seen in Figure 2 above, the number of hearings has increased substantially over the years, with 4,157 first-hearings held in 2012, 4,071 in 2013, and 4,074 in 2014.

In 2014, the Secretariat, in cooperation with stakeholders and with the support of the Oversight Committee and direction from the Courts, made significant strides in developing and implementing strategies to address barriers to file movement and to resolve the remaining caseload in a timely manner. Among the most significant of these are the approval and beginning implementation of the Incomplete File Resolution Process, which provides for the involvement of adjudicators in addressing barriers to file movement and resolution, and significant re-visioning of the Accelerated Hearing Process (AHP), which provides a key strategy for overcoming blockages due to delayed mandatory document collection.

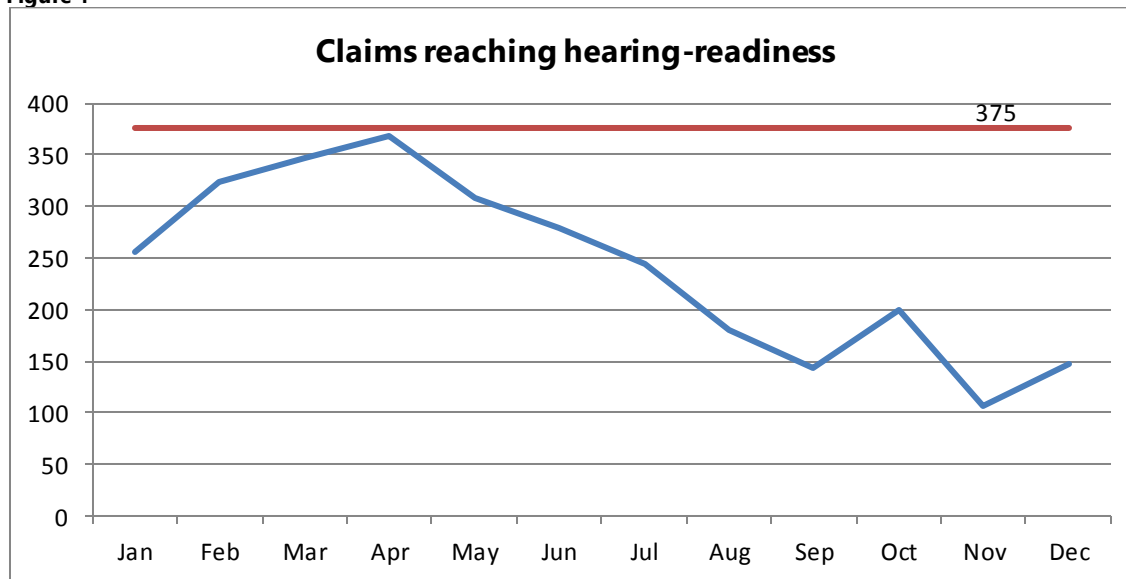
The Secretariat's ability to hold hearings is heavily dependent on the capacity and efforts of the Parties. Therefore, several assumptions were made in the setting of the target of 4,500 first-hearings per fiscal year: claims would become hearing-ready<sup>5</sup> at a rate which allowed for an average of 375 first claimant hearings held per month; claimants' counsel and Canada would have the capacity to attend an average of 1,125 hearings per quarter; and, the Secretariat and Canada would have sufficient resources to process the necessary number of claims.

In 2014, two factors in particular have contributed to difficulty in holding sufficient numbers of hearings to meet the established targets. Despite efforts made in past years to work with agencies and departments holding claimant records to reduce backlogs, and significant efforts to work with counsel and self-represented claimants to identify and obtain the necessary mandatory documents for claims to achieve hearing-readiness, the rate at which claims are reaching hearing readiness has declined dramatically over the year. Other than a brief peak in April, document production has not met the necessary pace to reach the required average of 375 hearings per month.

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<sup>5</sup> A claim is deemed hearing-ready by the Secretariat following receipt of all mandatory documents from the Parties.

Figure 4



The average number of hearing-ready files declined to 156 per month between August and December. The chart (Figure 4<sup>6</sup>) above shows a continuing decline since April 2014 (with a slight bounce in October), and is substantially lower than the average of 416 hearing-ready claims per month during 2013-14. The decrease in hearing-ready claims has impacted on the Secretariat's ability to schedule and hold the necessary volume of hearings to achieve its quarterly targets. It is reasonable to anticipate a steady decline in the number of "hearing-ready" files in the scheduling queue.

Initiatives permitting claims to proceed in advance of mandatory document completion have begun to offset this trend. The primary example of this is with respect to the AHP, described in detail below, which has had encouraging success in the latter portion of the year and promises to make a significant impact on hearing rates in the new year. Secretariat initiatives in assisting record-producing agencies in clearing up their backlogs have also been of considerable assistance.

Another factor significantly impacting hearing numbers in 2014 has been capacity among claimants and their counsel to sustain the pace of hearings necessary to address the remaining case load. The rate of postponements and hearing cancellations has remained significant, despite best efforts by adjudicators to discourage this. Additionally, initiatives brought forward by the Secretariat to reduce the impact of postponements have not yielded significant results. Firms responsible for large portions

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<sup>6</sup> Figure 4 addresses claims becoming hearing-ready through the normal process of mandatory document production, and does not include files moved to hearing under special circumstances such as expedited claims or claims heard in advance of document collection via the AHP or similar initiatives.

of the unheard caseload are in many cases finding it a challenge to manage the number of hearings needing to be scheduled in order to meet targets, while simultaneously discharging their responsibilities for claims in the pre- and post-hearing phases. As described in detail below, a series of in-person visits to large firms across the country by senior Secretariat personnel, including the Executive Director, have made significant inroads in working with these firms to develop workable plans for the timely resolution of their case loads. As well, as discussed in detail below, individualized efforts are underway to address the specific needs of the growing proportion of self-represented claimants who are experiencing barriers to participation, including a significant number who wish to obtain representation but have not yet been successful in retaining counsel.

As mentioned in the introduction to this report, while the number of hearings held is the primary means of resolving the caseload, hearing numbers alone do not tell the entire story. Claims may be resolved without a hearing, through the estate claims process (beginning in the new year), through withdrawal, a jurisdictional decision, non-admittance to the process, or an administrative closure under the IFR, among others. In 2015, as claims for deceased claimants begin to resolve (after a long abeyance awaiting policy decisions) and Step Two of the IFR begins implementation, it is expected that the proportion of claims resolving through means other than a traditional hearing will increase.

Though challenges exist, the Secretariat remains positive and dedicated to the commitments made in the Completion Strategy to the Courts for a timely and lasting resolution of the IAP, anticipating all first claimant hearings<sup>7</sup> to be completed in the spring of 2016.

## **Focus on the Claimant: supporting the needs and the rights of IAP claimants**

From its very beginning, the IAP was envisioned to be a claimant-centred process. Though every claim must be fairly tested, and not every claimant is awarded compensation, maintaining a safe, accessible, and respectful process that upholds the rights and dignity of claimants has always been of prime importance to the Chief Adjudicator and to the Secretariat as a founding principle. The Secretariat works to integrate this value into all aspects of its work, from seeking to accommodate claimant preferences with respect to hearing locations and adjudicator gender, to offering

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<sup>7</sup> This does not include continuations of adjourned hearings, review hearings, witness or alleged perpetrator hearings.

individualized support to self-represented claimants and targeted initiatives to meet the needs of elderly claimants and those with special needs. Below are some examples of how this value has been integrated into achievements in 2014.

### **DVD—“Telling your story”**

As part of the *National Outreach Strategy*, in March 2014, in concert with the final Truth and Reconciliation event in Edmonton, the Secretariat officially launched the short video, “Telling Your Story”. Available in both official languages, this approximately 20-minute video discusses what claimants can expect when they reach their hearing: who may be present, the roles of the participants, and claimants’ rights with respect to personal support, the setting, and so forth.

The video follows a claimant in a fictional hearing, interspersed with interviews with experienced IAP hearing participants including claimants, Elders, adjudicators, DCAs, legal counsel, representatives for Canada and the churches, and Resolution Health Support Workers to craft an accessible and comprehensive narrative. An accompanying 14-page information booklet uses plain language to discuss claimants’ rights, the individuals who may attend, provisions for the claimant’s safety and comfort, and the legal fee review process, and provides contact information for provincial/territorial law societies for claimants seeking legal representation.

This tool was created with the hope it would help to reduce pre-hearing anxieties; provide claimants with clear and realistic expectations of the hearing process; ensure that claimants understand their rights in the IAP; and describe the roles and responsibilities of participants at the hearing.

Filmed separately in French and in English, the videos were created in collaboration with Native Counselling Services of Alberta and aboriginal production companies Bear Paw Communications (English) and Forest Communications (French). The tool was launched simultaneously in DVD format and via YouTube; by the end of the year, over 11,000 DVDs had been distributed, and the [videos on YouTube](#) had received almost 1,200 views. A [transcript of the video content](#) is also available on the IAP web site.

### **Interpretation at Hearings**

Claimants undergoing an IAP hearing are entitled to interpretation services when needed, as one of the many provisions in the Settlement Agreement to remove potential barriers or sources of discomfort for claimants when giving their testimony.



Cultural disparities, and the sensitivity of the subject matter dealt with at an IAP hearing, make engaging qualified interpreters essential. Given the cross-country nature of the IAP and the breadth of Aboriginal cultures and languages amongst our claimants, finding and engaging qualified, objective, and sensitive interpreters under tight timelines can be a challenging task. The Interpreter Strategy, introduced in 2013's annual report, has now reached full implementation.

Over the past two years, significant improvements have been made to the ways in which Secretariat staff locate, engage, work with, and pay interpreters. These include the formation of a new roster of available interpreters, now covering over 40 individual languages and dialects; procedural changes for dialect checks with claimants; changes to amounts and methods of payment to encourage participation among experienced, qualified professionals; the establishment and staffing of a dedicated Interpreter Liaison staff position; and the creation of reference and training materials for adjudicators and interpreters to encourage consistency of translation. An Interpreter Guidebook, Glossary of Terms, and Interpreter Code of Conduct were [posted to the IAP web site](#) in December, 2014 along with notices to legal counsel and self-represented claimants, and over 80 interpreter contracts are now in place.

### **The “Over 80” Initiative**

This initiative builds on the work of the 2012-13 “Over 65” pilot project and the principles of the Accelerated Hearing Process to address the urgent need to preserve claimant testimony for the most elderly claimants in the IAP. This proposal, approved by the Oversight Committee in April, 2014, permitted claimants over 80 years of age to proceed to the hearing phase in advance of mandatory document completion (note, this was before the expansion of the AHP to the caseload-scheduling model).

When first proposed, 118 claims were identified for possible inclusion. Nearly half of these were eventually excluded, having already become hearing ready, lost contact or been expedited for health reasons. Moving forward, all claimants over 80 years of age will be invited to participate in the AHP.

### **Lost Claimants Protocol**

There exist a small yet significant number of claims which cannot currently proceed to resolution because legal counsel, or Secretariat staff working with self-represented claims, are unable to make contact with the claimants, despite best efforts. To protect the right of these claimants to be heard, following development by the Technical Subcommittee and Oversight Committee, with input from the National Administration

Committee, a proposal for new approaches to find and reach these claimants was brought forward for the court's approval along with the Completion Strategy and Incomplete File Resolution procedures. The protocol, approved by Justice Perell of the Ontario Superior Court of Justice in June 2014, was designed to provide the Secretariat the necessary authority to attempt to locate claimants while taking all appropriate precautions to protect the privacy of individuals.

Implementation of the Lost Claimant Protocol began with a public notice program, with posters distributed at the community level encouraging claimants to contact their lawyer, or the IAP info line. Next steps will involve using publically-available information sources (such as online directories); accessing information held in governmental and non-governmental databases; and potentially seeking information from Resolution Health Support Workers and/or other community resources.

In his order, Justice Perell modified the list of institutions which would be required to disclose contact information for lost claimants to "any entity, institution or agency, private or public operating in any Province or Territory of Canada, whether federal, provincial and/or municipal/regional law or legislation". As described in the protocol, this authority would be accessed only where less-invasive methods have failed.

At the close of the year, almost 200 claims had been formally referred to the Lost Claimant Protocol, and more will be added in the new year following detailed review.

### **Student-on-Student Admissions**

The IAP allows compensation to former residents of Indian Residential Schools who suffered abuse by fellow students. However, compensation depends significantly on the existence of admissions that school staff had knowledge of such abuse occurring.

Each student-on-student claim takes into account admissions arising from previously heard cases. A difficulty of this arrangement is that, once a decision is made, there is no current avenue for a claimant to benefit from subsequent new admissions. Therefore, in December 2013, the Oversight Committee approved a strategy to enable claims deemed likely to yield such admissions (based on information available in the application) to be heard prior to claims which might potentially benefit from them. In fall 2013, Canada provided a list of almost 2200 pre-hearing affected claims, of which 647 were identified as having best potential to generate new admissions. A pre-hearing conference call model similar to the AHP (see above) was introduced to allow identified claims to proceed to a hearing in advance of document collection where necessary.

In the beginning months of 2014, Canada's Negotiated Settlements team was successful in bringing a large portion of the original identified claims into the NSP, and several more became hearing-ready in the normal course, such that by May 2014, the number of claims in the project had dropped by approximately half. In subsequent months, participation by Canada's representatives remained strong, but involvement from claimant's counsel was mixed, due in part to the capacity of the firms involved to schedule additional hearings. By the end of the year, conference calls with self-represented claimants in the process had been completed, and only 70 claims remained to be moved forward which appeared likely to yield admissions of knowledge.

## **Supporting Self-represented Claimants**

Every claimant has the right to choose self-representation. Experience has shown, however, that those who retain legal counsel have an advantage with respect to compensation awards. After the application deadline, numbers of self-represented claims soared, and anecdotal information received by Secretariat staff indicated that many claimants were open to obtaining counsel, but unsure how to proceed, or in need of more information in order to dispel fears or to understand the potential benefits.

In October 2013, the Secretariat embarked on a project aimed at helping interested self-represented claimants to obtain legal counsel. Staff contacted claimants directly with information on the roles of legal counsel and the Secretariat's Claimant Support Officers, and on the IAP framework, including the most recent statistics on compensation, so as to provide claimants with tools to make an informed decision and to take the next steps. During these consultations, all efforts were made to avoid pressuring the claimant, and in every case the claimant's decision with respect to representation was respected.

In this project, Secretariat staff communicated with approximately 550 self-represented claimants, and 97% of these indicated an interest in obtaining representation. Since then, approximately 270 have retained counsel, and at the end of the year 176 more were actively seeking representation with the assistance of a Support Officer.

Additionally, the Secretariat has been working collaboratively with adjudicators, expanding criteria for escalating cases of self-represented claimants who are struggling to self-represent in the IAP, bringing them to the attention of adjudicators. The intent is to reduce the barriers faced by these claimants and/or bring the files to resolution.

One of the roles of the Secretariat's Claimant Support unit is to submit mandatory document requests on behalf of self-represented claimants. At the end of the fiscal year, the majority of these document requests have now been submitted for admitted claims.

This is an important step in ensuring that these claimants may proceed to a hearing by the spring of 2016.

In 2014, significant work has been devoted to reviewing and analyzing the self-represented caseload. In the spring and summer, the Secretariat made dedicated efforts to reestablish communication with claimants whose contact had been lost. These targeted efforts resulted in recovering communication with approximately one-third of these claimants; the remainder will be referred to the Lost Claimant protocol.

In the final quarter of the 2014 calendar year, the Claimant Support Unit completed a thorough analysis of all 1,380 outstanding pre-hearing self-represented claims. At least 91 of these claimants appeared to be good candidates for the Accelerated Hearing Process. Approximately 38% of the case load consists of withdrawn and/or deceased claims which will not likely result in a hearing; 27% are active and likely to proceed to hearing, and 35%, consisting primarily of lost contacts and claims awaiting more information in order to receive a decision on admission, may or may not become active and proceed to a hearing. Secretariat staff are working to develop the necessary procedures to refer these claims to the AHP, the Lost Claimant Protocol, and/or the Incomplete File Resolution process as appropriate, with the goal of scheduling all self-represented hearings by the end of 2015.

## **Supporting healing and reconciliation**

### **Outreach and Community Engagement**

In April 2013, a revamped and renewed, four-year National Outreach Strategy was approved. This Strategy supports the Secretariat's strategic objective to ensure a claimant-centred approach to the IAP, and forms the basis of its ongoing work to engage claimants, families and communities in the IAP process.

Now in its second year of implementation, the Strategy highlights the importance of providing accessible, consistent and clear information to claimants, their families, key partners, stakeholders and communities throughout the administration of the IAP. The strategy includes three major goals: to build knowledge and awareness about the IAP; to advance stakeholder engagement; and to contribute to healing and reconciliation for former students.

In keeping with the Outreach Strategy's focus on knowledge building and awareness, the Secretariat developed a series of fact sheets and other resources designed to provide clear, reliable information to claimants and other stakeholders on a variety of

topics, such as legal fees, the IAP info line, the role of alleged perpetrators, the NSP, student-on-student abuse, the hearing process, the role of the churches (see below), legal representation, self-representation, Group IAP, and others.

In 2014, Secretariat Outreach staff conducted a great deal of work focused on information sharing and relationship building with key stakeholders and communities. In the past year, the Secretariat engaged in partnerships with several Aboriginal communities and community organizations across the country for information distribution and delivery of information sessions, and at the close of the year, work is in progress for contracts with three such organizations to provide ongoing outreach activities. Outreach staff engaged with health organizations at the community, regional, and national levels with respect to awareness of, and access to, Health Support programming, and with organizations conducting commemorative and reconciliation-oriented work, such as Project of Heart and with the Toronto Council Fire for Education Day on June 13, 2014 in Toronto, ON. Secretariat staff also attended and operated information booths at the Truth and Reconciliation event in Edmonton, the National Association of Friendship Centres Annual General Meeting and Annual General Assembly, and the Special National Assembly of First Nations in Winnipeg. Outreach staff also participate in a variety of working groups, such as the Truth and Reconciliation Commission event planning working group.

### **Improving Awareness of the Role of the Churches in the IAP**

The Settlement Agreement provides the Churches the right as co-defendants to send representatives to attend IAP hearings. In the majority of cases, a Church representative, if in attendance, is present for three reasons: 1) to witness the claimant's experience at the Residential School; 2) to address the claimant at the end of the hearing in a manner to promote healing; and 3) to provide pastoral care, if requested to do so by the claimant. While in a relatively small number of claims the Church representative may exercise their right to participate as a defendant. In the great majority of cases, the Churches will respect the expressed wishes of the claimant as to their attendance.

In late 2013, the Ecumenical Working Group had expressed concern that significant numbers of claimants did not want the Church to attend, and asked to work with the Secretariat in developing materials to improve awareness and promote understanding among claimants, adjudicators, and others of the Church's role at hearings.

In consultation with representatives from the Churches, the Chief Adjudicator, and the Oversight Committee, the Secretariat developed fact sheets in both official languages, describing which Churches are involved in the IAP; their rights and limitations in terms

of their participation; how each denomination approaches their participation; and how claimants can voice their preferences with respect to the Church's presence at hearings.

Though developed with input from the Churches, the pamphlets are neutral in tone and focus on providing factual and unbiased information, so as to empower claimants to make an informed choice.

These fact sheets were distributed at the TRC event in Edmonton and will be distributed at the national closing TRC event in Ottawa in 2015. As well, these materials form a part of information packages provided to claimants, their families and communities, and other partners and stakeholders. This fact sheet, and other materials developed under the National Outreach Strategy, will be posted on the IAP web site in the near future.

## **Group IAP**

The Group IAP program, launched in 2008, provides contribution funding for groups of residential school survivors to conduct activities focused on healing or reconciliation. Following a Call for Proposals in February and March 2014, thirteen contribution agreements totaling \$649,926 were approved, representing all of the available funding.

Funded activities this year include workshops on learning and understanding the impacts of Residential Schools, wellness planning, addressing intimidation and partner abuse, nutrition, parenting skills, financial management, post-traumatic stress disorders – how to recognize potential PTSD and how to ask for help, as well as cultural activities such as sunrise ceremonies, pow-wows, and sweatlodges.

In October 2014, the Secretariat launched another Call for Proposals, closing in mid-December, for projects to begin in the new year. This Call for Proposals was accompanied by the launch of a new Group Coordinators' online toolkit, designed to assist Group Coordinators in forming groups, financial reporting, final reporting, and planning, implementing, and evaluating funded activities.

As a key point of the four-year strategic plan for Group IAP implemented in 2013, the Secretariat also devoted significant efforts this year to increasing awareness and promoting access to the Group IAP program. Working in close collaboration with National Outreach Strategy activities described above, the Secretariat held information sessions with established groups, potential applicants and partners across the country.

Funding of up to \$3,500 per eligible group member is available under Group IAP for selected proposals. Groups can propose a variety of activities to support the healing

process. Updates to the Terms and Conditions for the Group IAP contribution program were submitted to the Minister's office in spring 2014 and are pending approval.

## **The face of the IAP: Public information and media relations**

In the spirit of the Settlement Agreement's vision for promoting reconciliation and awareness among all Canadians of the lasting legacy of the Residential School system, and as an essential part of maintaining an accountable and transparent process, the Secretariat provides information on the process for claimants, lawyers and parties, the media, and the general public via a number of methods. Statistics on the progress of claim resolution, fact sheets, media releases, notices to counsel, minutes of the Oversight Committee, policy documents, and other information products are regularly published via the IAP web site at <http://www.iap-pei.ca>. The communications team also responds to media inquiries and facilitates interviews and requests for comments from the Chief Adjudicator, and works with initiatives such as Group IAP and the National Outreach Strategy to develop and disseminate new and updated information products.

New in early 2014, the Secretariat launched its Social Media presence, with the creation of Twitter accounts in both English (@IRSASInfo) and French (@SAPIinfo), as well as Youtube channels for posting the *Telling Your Story* video described above. By the end of the year, the Twitter accounts had issued a combined 249 tweets and amassed 220 followers, including legal counsel, journalists, members of aboriginal community organizations, public servants, and members of the public.

## **Addressing the caseload: moving towards completion**

### **The Completion Strategy**

With support from the Secretariat, the Chief Adjudicator submitted a Completion Strategy to the Supervising Courts in January 2014. This strategy, titled "Bringing closure, enabling reconciliation: a plan for resolving the remaining IAP caseload", provides an overview of the progress made to date in the IAP, and outlines the Chief Adjudicator's proposed plan for resolving the remaining IAP caseload in a fair, impartial and claimant-centred manner.

The Completion Strategy highlights the numerous measures the Secretariat has adopted to increase the number of claims that can be processed each year, including:

- Expediting hearings for elderly or frail claimants.

- Scheduling "blocks" of hearings wherever possible to allow more hearings to be scheduled and maximizing the efficiency of adjudicators' and parties' time.
- Working with agencies that hold the medical, employment and other documents that are required to support IAP claims to reduce delays.
- Implementing the Accelerated Hearings Process (AHP) designed for high-priority claimants to have their claims heard.
- Identifying sources of blockages using intensive case management (ICM).

As discussed above, the proposed Incomplete File Resolution (IFR) procedure and a "Lost Claimants" Protocol were submitted along with the Completion Strategy; these measures support the proposed completion plan and portions of each are subject to approval by the Courts.

The Secretariat is striving for the goal that all first claimant hearings will be held by the spring of 2016, and that all post-hearing work will be finalized by spring 2018, with final close-up activities after that.

The [Completion Strategy document](#) is available on the IAP website.

### **The Accelerated Hearing Process (AHP) and Setting Down Hearings**

Building on lessons learned in the "Over 65" pilot project conducted in 2012, the Accelerated Hearings Process (AHP), facilitated through the Technical Sub-Committee of the Oversight Committee, was designed to increase opportunities for high-priority claimants to be heard in a timely manner, while simultaneously increasing the efficiency of hearing scheduling in geographic areas. A key part of this process was the inclusion of claims which had not yet reached hearing-readiness with respect to mandatory document collection.

Claims incorporated into the AHP which have not reached hearing readiness undergo a pre-hearing conference call with an adjudicator, to encourage the timely resolution of outstanding requirements.

When it was first announced, uptake of the AHP from counsel was slow, and only a few files were scheduled under this process in the first several months, due to a combination of factors including awareness of the process and counsel's capacity to schedule additional hearings. However, beginning in the early summer of 2014, interest and involvement with the process began to pick up, as the number of 'ready' files decreased, awareness and participation increased as a result of senior Secretariat management conducting claimant counsel visits, certain restrictions on file inclusion were relaxed, and



the AHP model was integrated into other targeted initiatives (e.g., the 'Over 80' initiative discussed below).

An important adjustment which has significantly improved the rate of claims proceeding to hearing is the expansion of the AHP beyond counsel-requested inclusion into proactive solicitation of participation, and a decreased focus on geographic locations for claims to be included. Secretariat staff are reaching out to legal counsel with significant remaining inventories of pre-hearing claims, inviting them to set down hearing dates for their claimants using existing AHP mechanisms. The legal counsel visits described below have proven to be highly instrumental in increasing awareness of the benefits of the AHP to claimants and counsel alike and related mechanisms at the firm level. At the end of December, eleven law firms had volunteered to participate. This initiative will forge new lines of communication between the firms and the Secretariat and is anticipated to lay the groundwork for more firms to volunteer in 2015.

At the beginning of 2014, only two AHP hearings had been scheduled. By the end, approximately 140 had been scheduled, and a further 268 were identified as participating and in queue for scheduling.

Wherever possible, all requests for AHP by counsel are being accommodated, and efforts are underway to adapt the AHP model to include self-represented claimants. It should be noted, however, that claims facing significant barriers, such as complex legal issues or lost contacts, may not be eligible to participate.

### **Intensive Case Management (ICM)**

The ICM process is intended to address longstanding claims which have not yet become hearing ready. This process aims to open dialogue with legal counsel to identify sources of blockages and enable appropriate follow-up. This process provides counsel the opportunity to address outstanding file requirements before the necessity of involving a file management adjudicator via the Incomplete File Resolution process (see below). Claims are reviewed in order of their admission to the process, so as to first address those claims which have been waiting the longest.

In 2014, 674 files were screened into ICM, with a response rate of 87% from legal counsel. Following the completion of the ICM process, the majority of the claims (69%) had received the required information to continue in the regular Case Management process. The 13% which did not receive sufficient response have been referred to the Incomplete File Resolution process. Approximately 9% of the claims were identified as Lost Contacts, and will be referred to the Lost Claimant Protocol. The remainder consists

of withdrawn claims, deceased claimants, and cases where legal counsel withdrew their representation.

## **Legal Counsel Visits**

Precipitated by the submission of the Completion Strategy and court approval of the Incomplete File Resolution procedure and the Lost Claimant protocol (described below), the Executive Director of the Secretariat embarked upon a series of visits to the offices of legal counsel in the IAP. As it is not possible to make individual visits to all counsel participating in the process, visits are being held with firms representing the largest caseloads in the IAP, or which appear potentially at risk of being unable to complete all hearings by spring of 2016.

These visits include discussion of the Completion Strategy, updates on initiatives undertaken by the Secretariat, and a discussion of issues encountered by counsel and timelines for file completion. These visits have enabled the Secretariat to address particular issues raised by legal counsel where possible, have contributed to increased involvement in various initiatives (most notably the AHP), and have led to increased dialogue between the Secretariat and claimant counsel.

A total of 33 law firm visits have taken place. In follow-up to these meetings, the Secretariat has developed a template business planning document for completion by firms we are at risk of not completing their hearings by Spring 2016, outlining how they will meet the spring 2016 timeline for hearing completion. To date, 15 firms have received the template, and most have submitted their plans.

## **Incomplete File Resolution (IFR) Procedure**

A two-step process, the Incomplete File Resolution (IFR) procedure was extensively negotiated during 2012-13 at the Technical Sub-committee of Oversight Committee, and then further negotiated and revised after consultations with the NAC. By the end of 2013, the IFR had been approved by the Oversight Committee and NAC, and was submitted for court approval with the Completion Strategy in January 2014. The Honourable Justice Perell of the Ontario Superior Court of Justice signed a consent order approving the IFR in June, 2014. Other supervising courts have followed suit.

The IFR procedure aims to address claims which have not reached resolution despite best efforts. These include claims where, for various reasons, circumstances prevent the claim from reaching resolution through the normal hearing process (e.g., claimants who have passed away without providing testimony, claimants cannot be located, claimants

are not moving forward on the claim). The IFR addresses fundamental gaps in the IAP – the IAP does not provide tools to allow the Secretariat to wind up irreconcilable claims, and adjudicators do not have the authority to dismiss claims short of a hearing.

The first phase of IFR provides a framework for Secretariat staff, and designated ‘file management’ adjudicators when needed, to assist claimants and counsel with ‘stuck’ files so that they may proceed through the normal hearing process wherever possible. The second phase of IFR, which required court approval and Oversight Committee direction to implement, allows an adjudicator to receive submissions from the parties and make a “Resolution Direction” which may, in some circumstances, involve dismissing the claim.

Step One of the IFR began implementation in the summer of 2014. A total of 211 represented claimant files have been referred to the IFR since June 2014, all of which had undergone the Intensive Case Management process described above. Sixty of these claims have since returned to the regular file stream for further document collection, received a request for a hearing, or changed representation. Other claims have been withdrawn, identified as deceased, or referred to the Lost Claimant Protocol. Eleven files have been referred to File Management Adjudicators, and 141 files were still in the caseload at the end of the year. Based on current trends, it is expected that more than half of all represented files referred to step one of the IFR may be resolved through administrative measures and not require referral to a File Management Adjudicator.

Following the approval of the consent order in July, significant work was required to provide procedures and caseload analysis to the Oversight Committee for approval to proceed. This work was completed and the committee approved the implementation of Step Two in December 2014.

The IFR procedure document and the consent order signed by Justice Perell can be accessed [on the IAP website](#).

### **Deceased Claimants/Estate Claims**

Files for deceased claimants present a unique challenge, particularly when claimants have passed without opportunity to give sufficient testimony. Decisions and negotiated settlements are proceeding for claimants who had undergone a hearing, or provided testimony meeting certain criteria, before their passing. Remaining estate claims, without sufficient testimony provided, had been placed on hold by the Chief Adjudicator pending the resolution of a number of claim decisions were reviewed or re-reviewed.

The completion of three key decisions in late 2014 established that claims put forward on the basis of hearsay testimony would not succeed. However, claims where eye-witness testimony exists may still be brought forward (although compensation is limited in such cases to “acts proven”) and the evidence considered. The freeze on estate claims was lifted early in January 2015, and information posted on the IAP website with respect to the necessary criteria under which estate claims might proceed. Comprehensive information packages have been developed and sent to active estate claims at the pre-hearing stage in January, providing the option to withdraw, or to pursue the claim if they believe the necessary evidentiary criteria can be met. Following up to confirm each estate’s choice will be a priority in the new year.

At the end of 2014, there were 146 admitted and active estate claims in pre-hearing discussion or preparation. Additionally, there were 54 claims not admitted, and 165 claims awaiting estate documents in order to be provided a decision on their admission. Approximately 529 admitted, pre-hearing claims have been identified as deceased, but the estate has not yet supplied the necessary documentation to proceed.

Files for deceased claimants for whom no estate has come forward will be referred to a specialized ‘deceased’ stream of the Lost Claimant Protocol. Claims which cannot be resolved through estate withdrawal or decision are expected to be referred to the Incomplete File Resolution process.

### **Claimant hearing substitution**

In September 2013, the Oversight Committee approved an initiative intended to minimize the impact of hearing postponements and wait times for claimants by coordinating hearing substitutions among represented claims. When a represented claimant’s hearing is cancelled, within certain strict guidelines, counsel may request the substitution of another client to the same hearing date to minimize costs and take advantage of logistical arrangements already made. This is intended to allow another claimant a hearing opportunity, and reduce costs and inefficiencies from postponements. Notice to legal counsel was posted to the web site in January, 2014; however, only a few substitutions have been requested, and in most cases, postponements have been requested without substitutions.

### **Enhancing post-hearing file resolution**

As the Secretariat looks ahead to the completion of the IAP, its focus is expanding from the holding of hearings to the entire resolution of claims, and this includes seeking

further efficiencies for the processing and resolution of claims which are in the post-hearing stage.

In the fall of 2014, the Secretariat began to transition staff from the pre-hearing Case Management function to become dedicated post-hearing officers. These staff members work closely and proactively with adjudicators to assist them in moving their files from hearing to decision as smoothly and efficiently as possible. Activities influencing the time required in this stage include additional mandatory document production, expert assessments, witness or alleged abuser testimony, and final submissions conferences, among others.

At the end of the year, there were 2,326 post-hearing claims awaiting a decision, not including short-form decisions. The introduction of initiatives to increase hearings held (for example, the expansion of the Accelerated Hearings Process) can be expected to decrease the portion of cases eligible for short form decisions, and therefore increase the volume of cases that require post hearing activities, particularly with respect to the collection of mandatory documents following hearings. The Completion Strategy contemplates having all remaining cases decided within two years of the final hearing date; to achieve this will require continued post hearing performance improvements while other initiatives increase the volume of cases requiring post hearing work.

Currently, analysis shows that the majority of cases receive a decision within one year of their hearing.

### **IAP Report on the Achievement of Objectives**

In February 2013, the Oversight Committee approved the development of an IAP Report on the Achievement of Objectives. The purpose of this report is to inform the Oversight Committee on activities implemented by the Secretariat in achieving its goals. The report will describe how the IAP was implemented, summarize the circumstances leading to development of process improvements, discuss measures taken to protect and promote claimant-centredness, describe demographic characteristics of the claims presented, and analyze achievements against each identified objective. It will also highlight efficiencies, best practices and lessons learned.

Focus groups were conducted in late 2013 and completed in early 2014 gathering information for the identification of the objectives of the IAP to be examined, and helped further develop the methodology for conducting this review. The knowledge and insight of key representatives included claimants, as well as representatives from Aboriginal organizations, the Government of Canada, Churches, claimant counsel, and

Resolution Health Support Workers will be invaluable to this process. The synopses of the focus groups resulted in defining the IAP objectives with methodology which was presented and approved by Oversight Committee on April 1, 2014.

Work was completed on a report, presented to the Oversight Committee in March of 2014, focusing on various process improvements introduced to the IAP since its inception. This report identified over 90 such improvements and initiatives, of which 18 were identified as particularly influential and would become the focus of the nearly 70-page report.

It is anticipated that the full report will be submitted to the Oversight Committee in the Spring of 2017 for their review. Although addressed to the Oversight Committee, it is hoped that this report will also be of value to claimants and their families, researchers, historians, governmental and non-governmental organizations, and the Aboriginal community.

## **Protecting the confidentiality of sensitive information and the integrity of the process**

### **Request for Direction on the disposition of records**

As described in last year's report, the Truth and Reconciliation Commission (TRC) has requested access to all IAP records, including significant personal information. In 2013, both the Chief Adjudicator and the TRC filed Requests for Direction to the court on the question.

A critical issue in the case was the question of control over the records produced for and by the IAP. The Chief Adjudicator, Independent Counsel, and most of the Catholic Entities argued that the records are under the control of the Courts, and Canada and the TRC ultimately argued that the records are under the control of the Government of Canada. After carefully considering the expert and other evidence, the Chief Adjudicator adopted the position that the confidentiality promised to claimants in the Settlement Agreement can only be upheld through the destruction of the records, except where the claimant has consented for their records to be archived.

Following hearings in July, on August 6, 2014, the court ordered the immediate destruction of most IAP records following the conclusion of the IAP claim, and the retention of application forms, audio recordings of hearings, hearing transcripts and decisions for a 15 year retention period, during which claimant could consent to the

archiving of these four classes of records. The Court also ordered that a separate RFD be brought to determine the terms of a Notice Program to advise claimants of their option to provide their personal information to the National Centre for Truth and Reconciliation if they so chose. By the end of the year, seven of nine parties had filed appeals; these are not expected to be heard until late 2015.

On December 23, 2014, the TRC submitted to the Court their argument for direction on the Notice Program. The TRC is requesting that the Notice Program run the full fifteen years and involve community events. It is unlikely that details concerning the format and shape of the Notice Program will be finalized until the outstanding appeals are heard.

With the potential for further appeals it may be two years or more before the fate of the records is confirmed. Copies of relevant documents are available [on the IAP web site](#).

## **Security and Management of Information**

The Secretariat is committed to protecting the security of the information entrusted to it. In addition to supporting the Chief Adjudicator's Request for Direction regarding the disposition of IAP records, the Secretariat has been strengthening measures to protect and maintain its information holdings to ensure that information is organized and stored appropriately.

### **Information Management**

With the addition of dedicated and specialized Information Management (IM) resources to the organization in 2014, the Secretariat has developed and approved an IM Implementation Plan, and is proceeding with a number of related initiatives, such as the development of key policy documents and the creation of a separate, comprehensive electronic document information management system. This independent repository will enable the Secretariat to ensure the appropriate and necessary separation of records between the Secretariat and Canada, while complying with relevant government policies. Work is also underway to map business and document flows; document a comprehensive inventory of records; and create an official file plan.

### **Security of Personal and Confidential Information**

The Secretariat continues to provide mandatory security training to staff and adjudicators. Secure mobile information storage devices have been issued to adjudicators, and devices used by staff have been inventoried to ensure appropriate regulations with respect to information security are followed. Additional secure

document storage has been obtained for Secretariat offices (e.g., secure filing cabinets). A comprehensive security manual for adjudicators was prepared.

Additionally, in the latter half of the year, the Secretariat worked with KPMG services to conduct a review of security procedures and processes in order to identify any remaining gaps; the results of this review are expected early in the new year.

In past years, the primary method by which counsel submitted mandatory documents electronically to the IAP was via email. Following a pilot project held over the summer with four experienced firms, it has not only been approved but made mandatory for electronic document submission to be done via the secure Electronic Document Interchange (EDI) system, providing additional protection for claimant information. Physical document submission by mail or courier will continue, but electronic submissions via email will no longer be accepted.

### **Blott & Company**

In the course of the investigation leading to the removal of law firm Blott and Company from the IAP in 2012, it was discovered that the firm had possession of completed applications which had not been filed. In the court's decision, it was declared that these affected claimants were considered to have met the application deadline. Despite determined efforts by the Secretariat, the court monitor, and the court-appointed transition coordinator, at the end of 2014, there remain approximately 110 outstanding applications which have been transferred to successor counsel but not yet filed. In an additional 60 cases, the assigned successor counsel, being unable to contact the claimant, have withdrawn their representation. Further direction from the Court may be required in future in order to resolve the remaining unresolved claims.

### **IAP Integrity Protocol**

In the 2013 Chief Adjudicator's report, significant efforts were described for the protection of the integrity of the IAP and the clear delineation of roles and responsibilities with respect to this sensitive yet important subject.

Following the negotiation and development of an IAP Integrity Protocol in 2013, this protocol was brought before the courts in early 2014. On June 30, 2014, Justice Brown of the British Columbia Supreme Court granted an Order approving a revised Integrity Protocol, and appointed the Hon. Ian Pitfield (a retired Justice) to the role of Independent Special Advisor (ISA) to the Court Monitor, upon the unanimous consent of



the Oversight Committee and National Administration Committee. Links to this court order can be found [on the IAP web site](#).

The role of the ISA will be to review complaints brought to the Court Monitor or the Chief Adjudicator relating to the conduct of claimants' counsel and others claiming to act on claimants' behalf.

A Joint Direction provided by two of the Administrative Judges in November 2014 provided further clarity on the delineation of responsibilities between the roles of the ISA, the Chief Adjudicator, and the Court Monitor, and included an Administrative Protocol defining how and what information is to be provided, and to whom, upon the receipt of such a complaint.

### **Requests for Direction re: St. Anne's and Bishop Horden Schools**

In 2013, a Request for Direction was submitted on behalf of a group of former students of St. Anne's IRS in Fort Albany, Ontario, to the courts regarding documents pertaining to abuse suffered by students at St. Anne's. The documents in question stemmed from Ontario Provincial Police investigations and criminal trials of former school staff conducted in the 1990s. On January 14, 2014, the Ontario Superior Court of Justice ruled that the Government of Canada must release these documents to students who attended that school, and the documents could be used to support claims for compensation in the IAP. The decision also indicated that claimants who had already received a decision might ask leave of the courts for their claim to be reopened.

Following the decision, Canada updated its school history for St. Anne's school and its document productions on related cases. A small group of adjudicators was appointed to develop expertise on this school and the newly produced documents, to handle related claims involving self-represented claimants. Notices were sent by the Secretariat to legal counsel and self-represented claimants, and the Chief Adjudicator provided guidance to adjudicators for the handling of claims in progress.

A second RFD was filed by the same applicants, seeking disclosure of written reports of experts who had testified during the criminal proceedings. Justice Perell dismissed this RFD.

Significant discussion followed regarding the redaction of names and personal information in the documents produced; this became the subject of a third Request for Direction. The Chief Adjudicator is not participating in this RFD, as it was primarily between the applicants and Canada.

Later in the year, the same Ontario legal counsel submitted a similar Request for Direction with respect to Bishop Horden School, seeking additional document disclosure from Canada. Canada asserted that it held no additional information with respect to criminal proceedings or multiple staff terminations for that school. This Request also invited the Court to direct the Secretariat to contact claimants to advise them of the possibility of serving as witnesses for one another's hearings; this recommendation, if successful, would represent a dramatic change to how the IAP has been interpreted, impose significant obligations on the Secretariat, and open the door to significant privacy risks for the claimants involved. For these reasons, the Chief Adjudicator is participating in this RFD. The court hearing in this matter is expected in May, 2015.

Although as yet no completed claims have yet been reopened as a result of the St. Anne's decision, there remains a risk that issues arising from these cases may impact the timely completion of the IAP should claims be delayed or reopened.

## **Capacity and capability to complete the mandate**

### **Completion Action Plan**

Building on the Completion Strategy, the Secretariat is developing a comprehensive Completion Action Plan to ensure a seamless and efficient wind-down off the IAP.

Utilizing the analysis presented in the Completion Strategy, initial planning began in the summer of 2013 to identify workload assumptions for each year to the end of the IAP, and to prioritize key areas of focus for the eventual wind-down of the Secretariat.

Following detailed consultation with managers, a Plan, containing multiple themes, was prepared in spring 2014. Following Executive Team review, the Completion Action Plan was then further streamlined, reducing the number of Themes and Activities and ensuring a focus on activities required for completion rather than a reiteration of current priorities and operational activities. The new finalized themes are as follows:

- People
- Information
- Caseload resolution
- Corporate services
- Governance

Once finalized, the Completion Action Plan will identify the steps necessary to ensure the government meets its obligations related to the Settlement Agreement, while effectively managing human resources, budgets, information management and technology, infrastructure and change management as the IAP comes to an end. Given the many facets of the Settlement Agreement, the Secretariat must work together with partners to ensure that appropriate resources are in place to support continued implementation until the end of its mandate.

## **New and Returning Deputy Chief Adjudicators**

The introduction of several initiatives and projects requiring adjudicatorial involvement, retirements, and the importance of maintaining full capacity with respect to hearings, decisions and decision reviews have strained the capacity of the adjudicator team to meet demand while respecting both human and contracting limits. Therefore, the IAP has welcomed the addition of two new Deputy Chief Adjudicators (DCAs) following a Aboriginal set-aside Request for Proposals held in the spring. Wes Marsden and Lisa Weber, both highly qualified and experienced IAP adjudicators, were appointed as of September 2014.

As well, the Chief Adjudicator was happy to welcome in October the return of Delia Opekokew in the capacity of "DCA Emeritus". Ms Opekokew's expertise will be focused on specific projects such as Aboriginal focus groups, outreach to stakeholders, and participation in the Report on the Achievement of Objectives described above.

The Chief Adjudicator continues to monitor capacity levels among the larger adjudicatorial team, currently composed of 91 adjudicators. It will be important to ensure ongoing capacity of adjudicators to address the remaining caseload.

## **Human Resource**

Recruitment and retention of skilled, experienced staff has been an ongoing challenge since the beginning of the IAP, and this continued to be a key priority in 2014. The Secretariat staff complement on December 31, 2013 was 244, compared to 241 at the end of 2013. With the addition of casual and student employees, this number rises to 258 of a total 285 FTEs (full-time equivalents) required. Achieving the goal of holding 4,500 hearings annually (no longer a realistic number) and managing a successful, controlled wind-down to the IAP is directly related to the ability of the Secretariat to work at peak efficiency and full capacity. Additionally, the toll on wellness and efficiency of the existing staff due to the higher workload must not be ignored.

The accomplishments made this year with respect to staffing existing and new vacancies are significant; at the close of the year, the vacancy rate was estimated at 19%, compared to 26% in the spring of 2014. Dedicated efforts with respect to launching and completing multiple staffing processes, and additional flexibilities in the form of exemptions on elements which created slow-downs and blockages, are yielding results – for example, 22 new hires were made in the July-September quarter alone. Additionally, the Secretariat routinely meets or exceeds standards with respect to maintaining a diverse and representative workforce.

As the Secretariat looks ahead to the coming wind-down of the program, it faces the difficult task of continuing to hire to staff key vacancies while simultaneously beginning the transition process of closing certain functions. The organizational integrated HR plan and Completion Action Plan described above provides for the orderly shift of positions and encourages the internal transfer of experienced staff wherever possible to fill new and existing vacancies, to retain and further develop their knowledge and expertise, and to meet the changing needs of the organization over time. For example, individuals from pre-hearing functions have already begun the transition to new positions meeting the needs of a larger post-hearing caseload and the new IFR and Lost Claimant functions.

Simultaneously, the organization is placing significant emphasis on training, skills development, wellness, and resiliency, including training investments, internal assignment opportunities, and other learning opportunities. The Secretariat has an ongoing Wellness Strategy and an active wellness committee which organizes events and shares relevant information on a regular basis. Specialized training sessions were offered to staff in the fall, focusing on the subjects of resilience and responding to change and uncertainty. Additionally, the Secretariat continues to support flexible work arrangements to support healthy work-life balance, to encourage team building and to promote a respectful and healthy workplace. The Public Service Employee Survey, held every three years, was completed in the fall of 2014, and results are expected early in the new year; these findings will also contribute to the Secretariat's ongoing commitment to support staff throughout the organization's mandate.

## **Financial Resources**

Budget 2012 provided funding from 2012-13 to 2015-16, with the expectation that the IAP would begin winding down in 2014-15 and finish in 2015-16. Due to the unforeseen high volume of applications in the months leading up to the application deadline, the Secretariat was facing a shortfall for the 2014-15 and 2015-16 and required funding for future fiscal years.

The 2014-15 funding shortfall has been successfully mitigated through reprofiling of a surplus from the previous fiscal year, as well as an additional transfer from other areas of AANDC where surpluses had been identified.

The need for additional funding for future years' operations has formed a significant priority for the Secretariat throughout 2014. Dedicated efforts to analyze current and future year needs, and to prepare the necessary submissions in coordination with AANDC culminated in the preparation of a submission to government at the end of the fiscal year. The Secretariat has conducted an exercise to find efficiencies and to ensure strong stewardship of funds. This has resulted in strengthened monitoring and tracking of invoices and stronger forecasting of required resources.

## **Procurement**

The Secretariat is responsible for managing a large number of contracts – for about 100 Adjudicators/DCAs; Oversight Committee members; medical, psychological, and actuarial assessment professionals, interpreters, and legal services. The Secretariat is in a unique position with respect to contracts due to requirements set out in the Settlement Agreement, and the need to comply with government contracting policies.

In 2014, the Secretariat faced the added challenge of some contracts reaching AANDC's financial contracting limits. Had the contracts reached their limits without possibility of extension, the Secretariat could have been severely impacted in conducting its business. However, successful negotiations with both AANDC and Public Works and Government Services Canada (PWGSC) have enabled the Secretariat to transfer contracts to PWGSC, to provide higher funding authorities and ensure service continuity.

## Priorities for 2015

The Secretariat has seven long-term strategic objectives, each supported by a priority designed to improve the delivery of the IAP while enhancing the claimant's experience and protecting their rights. The priorities identified for 2015 emphasize the importance of making the best possible use of available resources, meeting our commitments as outlined in the Completion Strategy, improving the movement of files, maximizing stakeholder relationships, promoting healing, protecting and managing information, supporting the needs of the Chief Adjudicator and his delegates, developing staff, and supporting the completion of the IAP mandate.

### Strategic Objectives

### Priorities for 2015-16

*Process claims in a timely manner*

Efficiently process claims to ensure all claimant first-hearings have occurred, and ensure the timely movement of files through the post-hearing process.

*Ensuring a claimant-centred approach*

Promote healing and reconciliation among former students, their families and their communities throughout our process, with a particular emphasis on developing mutually beneficial partnerships with service providers that will support the sharing of information.

*Manage resources economically, efficiently and effectively*

Align and manage the required human and financial resources to allow the Secretariat to deliver on its mandate and achieve the established targets.

*Manage information effectively*

Protect the privacy, confidentiality and security of personal information and develop strategies on sharing and disposing of file material in a manner in accordance with the court's direction.

*Provide support to the Chief Adjudicator*

Provide timely expert technical assistance and policy analysis to the Chief Adjudicator and his delegates.

*Promote a healthy work environment/organizational wellness*

Ensure staff have the necessary skills to continue providing IAP claimants with exceptional service as well as manage change through communication, coaching, mentoring, resiliency training, and career development opportunities; and, with a focus on staff wellness.

*Completion of the IAP*

Implement the Completion Action Plan outlining the transition strategy to bring the IAP to an official close; and, prepare the IAP Final Report for the IAP Oversight.

## **In closing**

The year 2014 has been a time of significant transition, for the IAP and for the Secretariat. The nature and makeup of the remaining caseload is changing: as straightforward claims are processed through, we face a caseload increasingly comprised of claims facing individual and complex barriers to resolution; as well, demographics are shifting to a larger proportion of self-represented vs. represented claims.

Multiple new initiatives, court and policy decisions, and process options are changing the way we approach claim processing and business processes. Workloads are shifting steadily from the pre-hearing to the post-hearing inventory, so as to ensure that claimants receive not only a timely hearing, but also a timely decision. On the organizational level, the new year will see significant shifts as the Secretariat begins the difficult process of winding down certain functions while attempting to increase capacity in others, and reorganizing its structures for maximum efficiency while working to preserve and support at all times the wellness and effectiveness of its highly dedicated staff. In all of these ways and more, 2015 promises to be a year of change and challenge at a level unseen since the earliest beginnings of the process.